

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff, 2:16-cr-120-LRH-CWH

ORDER

ABRAHAM J. ELLIOTT,

Defendant.

Before the Court is Defendant Abraham J. Elliott’s (“Elliott”) motion for the Court to reconsider the revocation of supervised release and the sentence imposed on him on February 21, 2017 (ECF No. 29). The government filed its response (ECF No. 32) on April 4, 2017.

I. Background

On February 21, 2017, the Court sentenced Elliott to a within-Guidelines sentence of 11 months of custody followed by 25 months of supervised release. ECF No. 28. The sentence was imposed after Elliott admitted to three separate violations of his supervised release and argued before the court about an appropriate sentence for those violations. The admitted violations included: Failing to Pay Court Ordered Restitution, Failing to Be Truthful to the Assigned Probation Officer, and Failing to Submit Court Mandated Monthly Reports. ECF No. 26. After the Court entered judgment and imposed the above sentence, Elliott filed a pro se motion on March 3, 2017, for the Court to reconsider his sentence. ECF No. 29. Elliott's ground for reconsideration is that the court was not aware of a previous proposed agreement between the

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1 parties in which he would admit to the above violations in exchange for a joint recommendation
2 of 8 months of custody followed by 10 months of supervised release.

3 **II. Legal Standard**

4 A district court does not have inherent authority to reconsider sentencing orders. *United*
5 *States v. Smartt*, 129 F.3d 539, 540 (9th Cir. 1997). Rather, a district court may only modify a
6 sentence in three limited circumstances: (1) following a request for modification for special
7 circumstances, brought by the Director of the Bureau of Prisons, (2) if modification is expressly
8 permitted by statute or Fed. R. Crim. P. 35, and (3) when the sentencing range “has subsequently
9 been lowered by the Sentencing Commission.” *Id.* at 540-1. However, Rule 35(c) grants the
10 court the authority to correct a sentence within seven days of the oral announcement of that
11 sentence.

12 **III. Analysis**

13 The court will deny Elliott’s motion for reconsideration. Elliott has provided no valid
14 basis for the Court to reconsider and modify the imposed sentence. The Bureau of Prisons has
15 not submitted a motion for modification. Additionally, the sentencing range has not been
16 lowered since Elliott’s sentencing. That leaves only statutory authority or Rule 35 as the basis for
17 a modification of Elliott’s sentence. Elliott has not pointed to any statutory authority or
18 provisions within Rule 35 that grant this Court jurisdiction to modify his sentence. Finally,
19 Elliott’s motion is untimely. The seven day period given to the Court to modify the imposed
20 sentence has passed, and with it, the Court’s jurisdictional authority to modify the sentence. *See*
21 *United States v. Barragan-Mendoza*, 174 F.3d 1024, 1027-8 (9th Cir. 1999).

22 The fact that Elliott and the Government previously proposed a sentencing
23 recommendation that was not shared with the court is immaterial. This is not a factor warranting
24 a modification of the imposed sentence. Furthermore, Elliott’s statements in his motion to
25 reconsider regarding his knowledge of the agreement are not supported by the record. *See* ECF
26 No. 26. There is no evidence that Elliott ever agreed to the proposed deal recommendation by the
27 United States; there is only evidence that he rejected it and wanted instead to plead his sentence
28 before the court, as he ultimately did. In imposing Elliott’s sentence, the court duly considered

1 all of the factors set forth in 18 U.S.C. § 3583(e) and imposed a sentence which is sufficient, but
2 not more than necessary to comply with the purposes of sentencing.

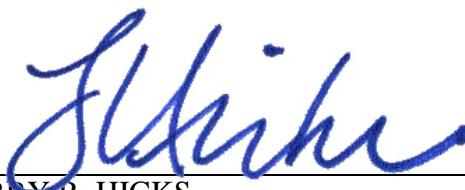
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4 IT IS THEREFORE ORDERED that Defendant Elliott's motion for the Court to
5 reconsider the revocation of supervised release and the sentence imposed on him on February 21,
6 2017 (ECF No. 29), is DENIED.

7 IT IS SO ORDERED.

8 DATED this 6th day of June, 2017.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE

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